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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,
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11 Plaintiff,
12 v.
13 NATHAN HALL,
14 Defendant.

Case No. CR13-113RSL

ORDER REGARDING
PRETRIAL MOTIONS

15 This matter comes before the Court on a number of pretrial motions filed by both parties.
16 Dkts. ## 134, 135, 136, 138, 142, 143, 148. Having considered the motions, the parties'
17 memoranda, and the arguments made before the Court on September 10, 2018, the Court finds
18 as follows:

19 The government filed a motion *in limine* to admit certain statements made by Jeffrey
20 Laviolette, a codefendant who previously pleaded guilty. Dkt. # 134. Those statements were
21 made to law enforcement after they caught Mr. Laviolette, along with an unapprehended man
22 the government claims was defendant Nathan Hall, attempting to bring drugs across the United
23 States–Canada border. Mr. Laviolette identified the unapprehended man as “William
24 Nickerson,” which evidence suggests was an alias for Mr. Hall. The government will be
25 permitted to explain the circumstances of the investigation and how it led to defendant, but the
26 motion is DENIED insofar as the government seeks to introduce Mr. Laviolette’s actual
27 statement as non-hearsay under Federal Evidence Rule 801(c) or as a present sense impression
28 under Rule 803(1). The Court finds that under Rule 403, it is too prejudicial.

1 The government filed a motion *in limine* to exclude an affidavit by Jeffrey De La Paz,
2 swearing that he was the unapprehended William Nickerson. Dkt. # 135. That motion is
3 GRANTED, because the affidavit is an out-of-court statement that does not fall within any of
4 the exceptions provided in the Federal Rules of Evidence. See Fed. R. Evid. 801, 802.

5 The government filed a motion *in limine* to prohibit defense counsel and any other
6 defense witnesses from referring in the presence of the jury to the potential prison time Mr. Hall
7 faces if he is found guilty, or to the custodial time he may already have served in connection
8 with this case. Dkt. # 136. That motion is GRANTED.

9 The government filed a motion *in limine* seeking to preclude the defense from
10 impeaching certain government witnesses with prior convictions that fall beyond the scope of
11 Federal Evidence Rule 609. Dkt. # 138. The Court agrees that those convictions fall outside the
12 scope of what Rule 609 permits, and the motion is accordingly GRANTED.

13 Mr. Hall filed a motion *in limine* to exclude a variety of evidence. Dkt. # 142. He seeks to
14 exclude evidence of a photographic array in which border agents identified the unapprehended
15 man at the border as the same man pictured on a California driver's license with the name
16 "William Nickerson." The government plans to argue that man pictured on the license was Mr.
17 Hall. Mr. Hall also moves to prohibit the government from eliciting in-court identifications of
18 Mr. Hall, because he claims they will be impermissibly biased by the witnesses' experience of
19 already identifying Mr. Hall in the flawed photo array. The Court concludes that the photo array
20 was not impermissibly suggestive or otherwise fatally flawed. See Simmons v. United States,
21 390 U.S. 377, 384 (1968). In-court identification of Mr. Hall will be allowed.

22 He also moves to exclude evidence of certain prior crimes and bad acts. In particular, the
23 government seeks to introduce evidence of an incident in Delta, British Columbia, in which a
24 suspect, who may have been Mr. Hall, identified himself as "William Nickerson" and produced
25 a California driver's license with that name on it. That evidence is admissible as a means of
26 proving Mr. Hall's identity. Fed. R. Evid. 404(b)(2).

27 Should Mr. Hall testify, the Court will permit the government to inquire into his felony
28 convictions for dangerous operation of a motor vehicle, because those convictions are

1 substantially more probative than their potential prejudicial effects. See Fed. R. Evid. 609(b)(1).
2 In addition, the Court will permit the government to impeach Mr. Hall, should he testify, with
3 his convictions for breaking and entering and for failure to comply with recognizance. See Fed.
4 R. Evid. 609(a).

5 Mr. Hall also requests that the Court exclude references to his extradition. The
6 government agrees, except that it seeks to attribute the delay in bringing this case to trial to the
7 extradition process. As explained in the hearing, the Court will explain to the jury that the delay
8 in getting this case to trial is not the fault of either the defendant or the government.

9 Finally, Mr. Hall raises several issues regarding discovery and other government
10 disclosures. The parties have agreed to continue this case's trial date, which may provide time
11 for the parties to agree on any disputed disclosures. In addition, the government is aware of its
12 ongoing statutory and constitutional duties regarding disclosures. To the extent that discovery
13 and disclosure disputes remain, the Court reserves ruling on them at this time.

14 Mr. Hall filed a supplemental motion *in limine* to preclude the government from using the
15 word "smuggle" or "smuggling" to describe Mr. Hall's previous activities that ranged between
16 the United States and Canada. Dkt. # 143. The government will be permitted to make inferences
17 from the admissible evidence it intends to introduce. That motion is DENIED.

18 The government filed a motion *in limine* to exclude testimony of an expert the defense
19 intends to call, who is likely to testify about the unreliability of eyewitness testimony.
20 Dkt. # 148. The Court will permit testimony on the reliability (or lack thereof) of eyewitness
21 testimony generally, but will not permit testimony that a particular identification process in this
22 case was unreliable.

23 DATED this 14th day of September, 2018.

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27 Robert S. Lasnik
28 United States District Judge